R E P O R T R E S U M E S

ED 020 977 UD 005 702

THE CRUMBLING LEGAL BARRIERS TO SCHOOL DESEGREGATION.

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PUB DATE OCT 66

EDRS PRICE MF-$0.25 HC-$0.24 4P.

DESCRIPTORS- *SCHOOL INTEGRATION, *RACIAL SEGREGATION, *SOUTHERN STATES, *DISCRIMINATORY LEGISLATION, LEGAL SEGREGATION, LAW ENFORCEMENT, NEGROES, BORDER STATES

THE CURRENT STATUS OF ANTI-SCHOOL DESEGREGATION LAWS AND SOME OTHER DISCRIMINATORY PRACTICES IN THE SOUTHERN AND BORDER STATES ARE REVIEWED IN THIS ARTICLE. ALTHOUGH MANY OF THESE LAWS ARE STILL IN EXISTENCE, A RECENT EXAMINATION HAS SHOWN THAT THEY ARE NOT USED OR ENFORCED. THIS ARTICLE WAS PUBLISHED IN THE "SOUTHERN EDUCATION REPORT," VOLUME 2, NUMBER 3, OCTOBER 1966. (NH)

ED020977

VOLUME 2 • NUMBER 3
OCTOBER 1966

SOUTHERN EDUCATION REPORT

a magazine for decision-makers

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ON THE COVER

Mrs. Cord D. Wilson teaches a class of 33 in a one-room school in Clay County, Ky. Mrs. Wilson is also shown on page 6 serving food which she cooked for the children. The central heater, a coal-burning stove, doubles as range.

PICTURE CREDITS

Cover and page 6—Thomas V. Miller Jr. Pages 4,5—Billy Davis. Page 8—Ford Foundation (William Simmons). Page 9—Myron Wood. Page 12—Montgomery Advertiser and Alabama Journal. Pages 13-17—John Gossage. Page 18—Doug Kennedy, Miami Herald. Page 19—Tony Garnett, Miami Herald. Pages 20,21—Bill Sanders. Page 20 (sketch)—D. C. Heath and Co.

The editors of Southern Education Report welcome articles or outlines of articles intended for publication. Manuscripts should be accompanied by a stamped, self-addressed envelope.

SUBSCRIPTIONS

One year (10 issues), $3; two years (20 issues), $5.50.

Groups: five or more copies to different addressees, $2.50 each per year; five or more copies to one addressee, $2.25 each per year.

Add 75 cents per year to above rates for orders to be sent outside the United States.

Single copies, any issue, 50 cents each. Ten or more copies, any one issue, to one addressee, 40 cents each.

Southern Education Report is the successor to Southern School News, which was discontinued with the issue of June, 1965. Back-numbers of Southern School News, any available issue, 20 cents each.

MAILING ADDRESS
P.O. Box 6156, Nashville, Tenn. 37212

UD 005 702

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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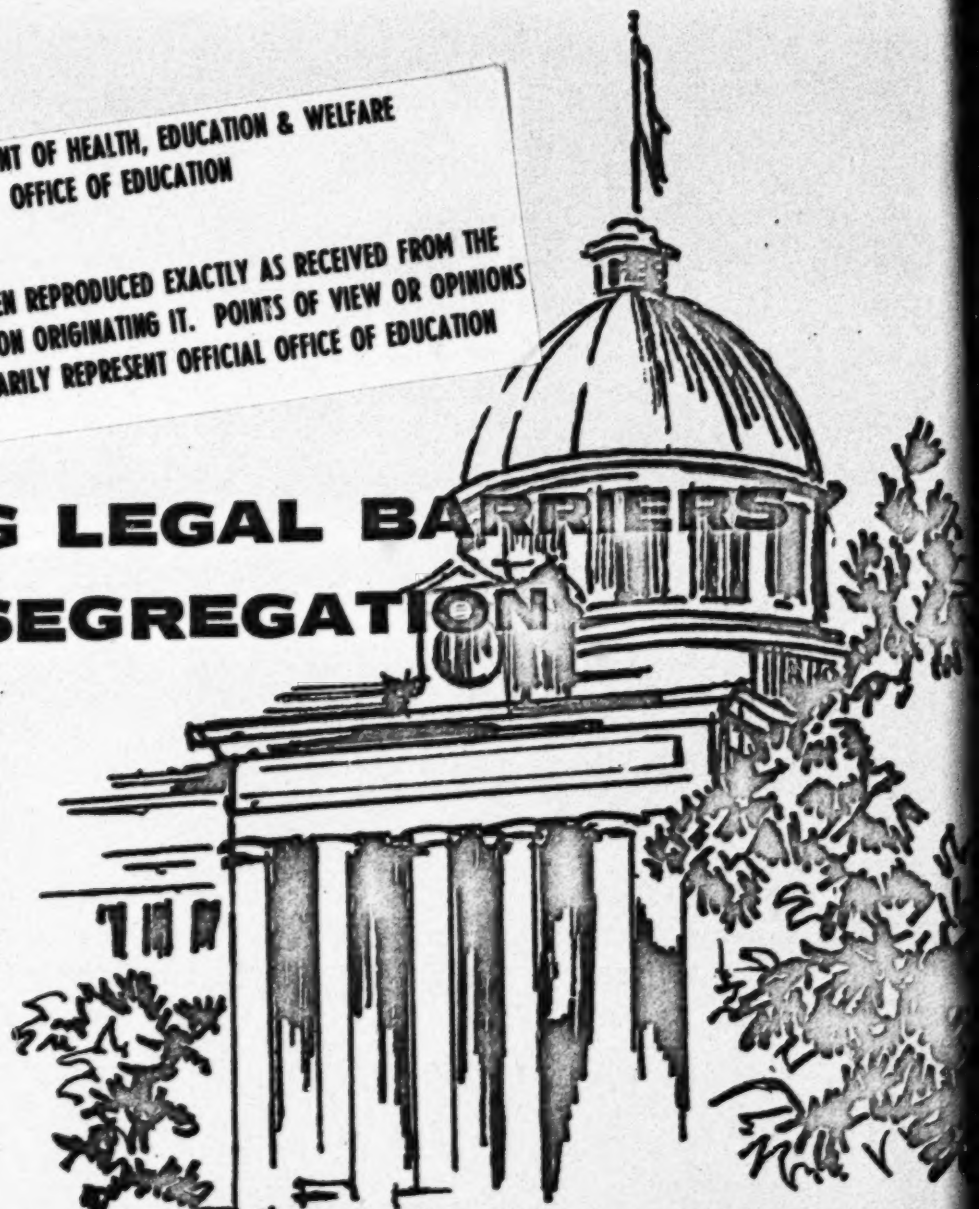
THE CRUMBLING LEGAL BARRIERS TO SCHOOL DESEGREGATION



By Jim Leeson

ALABAMA, with its legislative approach to resisting the federal guidelines for school desegregation, stands alone today among the Southern states. Court decisions and the civil rights acts of recent years have prompted one state after another to shift resistance from the legislative halls to the offices of education administrators. But in the first decade after the 1954 decision on school segregation, the legislatures of the South became the main battlefields of opposition to school desegregation. Every Southern state adopted a package of resolutions and laws to stop or delay the effects of the Supreme Court's rulings and the subsequent orders of the lower federal courts.

The major barriers that Southern legislators erected before their segregated schools were laws that:

- *Authorized closing desegregated schools.* These were used infrequently and with little success.
- *Amended compulsory attendance laws to prevent enforced enrollment of whites with Negroes.* All but three states now have statewide compulsory attendance.
- *Established pupil placement laws, which provided numerous factors other than race for determining assignment of students.* Although not ruled unconstitutional by the courts, these provisions are no longer accepted as a means of desegregation.
- *Encouraged private schools, especially through state tuition grants.* Private schools are again increasing in popularity, but the courts have limited the use of grants.
- *Discouraged desegregation activity, either through barratry laws, restrictions on the NAACP, or ending tenure for school teachers.* These laws had an effect, but it would be impossible to measure the degree because of their subtle nature.

Even before the 1954 decision, the legislatures had begun to pass laws to head off desegregation. The most popular tactic then was to provide out-of-state tuition to Negroes unable to obtain their desired training at all-Negro schools within the state. In subsequent years, each state in turn enacted more direct anti-desegregation laws as the issue threatened. Meeting often in special sessions called on the problem, the legislators used strategies that varied by state, in number and complexity.

The last major legislative battle—and the one utilizing the largest number of laws and resolutions—occurred in Louisiana during the early 1960's as the result of the court-ordered desegregation of New Orleans schools. In a series of special and regular sessions, the Louisiana legislators adopted approximately 100 separate pieces of legislation, most of which were

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quickly invalidated by the federal courts. In one instance, some of the anti-desegregation laws were invalid before their passage, because of an earlier court order.

Correspondents for Southern Education Reporting Service recently took another look at the legislative picture in the region and found that although many of the anti-desegregation laws remain on the books, they are unused. Some laws still on the books are invalid because of court decisions, and others not directly at issue in those decisions are known to be unusable because of legal precedent.

Some of the laws linger on, still under attack but still in use. Virginia, Mississippi and South Carolina ended compulsory attendance as a key point of their strategy, but in the past year strong efforts to re-enact such laws met with failure in all three states, even though the public schools are desegregated. Federal courts have limited the use of tuition grants except in private schools where the state money provides less than half of the financial support. Students still can get money to attend private schools in Alabama, Louisiana, Mississippi and Virginia.

Alabama, in continuing to legislate against desegregation pressures, adopted several proposals made by Gov. George Wallace. The new laws declare the guidelines illegal and nullify any compliance agreements made by school districts; allocate surplus state funds to replace in part federal aid the local boards might lose; authorize local boards to waive their right to deal with the U.S. Office of Education in guidelines negotiations and vest it in the governor and the legislature; and create a new commission to enforce the law.

In Arkansas, not one of the laws, resolutions and constitutional amendments seeking to prolong school segregation remains in use, although many are on the books. Nearly all of those attacked in the courts were held unconstitutional. A few were repealed by the legislature when it found that they had undesirable applications. Act 9 of 1958, for example, provided for easy recall elections on school board members but its use for reasons other than desegregation made it a nuisance before it was repealed in 1961. The Little Rock school crisis triggered most of the state's legislation on the issue and after that event, only two more proposed constitutional amendments were submitted to the voters by the state legislature. Both were backed by Gov. Orval Faubus and both lost. Since the 1961 session, no segregation legislation has been adopted.

Florida's legislature constructed a program to counter desegregation, with laws passed in 1956, 1957 and 1959, but since then there has been no attempt at segregation legislation. The turning point in Florida involved the Virgil Hawkins case and his attempt to enter the University of Florida, which resulted in the State Supreme Court "reluctantly" acting on the U.S. Supreme Court mandate to end discrimination.

Legislators in Georgia enacted laws on the school issue annually up through 1961. Then that General Assembly eliminated all references to race or segregation by amending the school laws, section by section.

Correspondents for SERS found that although many of the anti-desegregation laws remain on the books, they are unused.

According to Associate State School Supt. Allen Smith, Georgia laws now contain absolutely no references to segregation or race. The Georgia constitution still has some segregation provisions but these are being ignored, Dr. Allen says, since they have been "superseded" by court rulings.

The Mississippi lawmakers adopted segregation laws at every session from 1954 through 1964 and these remain on the books, although they are ignored in enforcement. The legislators tangled with the federal courts and lost over the enrollment of James Meredith as the first known Negro student at the University of Mississippi in 1962. A 1965 special session enacted a law aimed at Negroes, requiring children of nonresidents to pay tuition, but the 1966 regular session repealed the act.

North Carolina's package of school laws, known as the Pearsall Plan, has been struck down by the courts, although the acts remain on the law books. Adopted in 1956 and considered a "safety valve" against school desegregation, the laws were ruled unconstitutional last winter by a federal court when the state issued its first tuition grant.

South Carolina's constitution and statutes still contain quite a few segregation provisions that run contrary to federal laws or court decisions. These were adopted during every session from 1954 through 1961, and then again in 1963. One legal authority in the state suggests that the legislature has left the dead laws untouched for psychological and practical purposes. His reasoning is that efforts to end some of the constitutional provisions through a referendum might be interpreted as an endorsement of desegregation, causing a reaction against candidates at election time.

Tennessee enacted a series of segregation laws in 1957 and 1959 but not with the furor of most other Southern states. The state ignores their existence or considers them meaningless, and seldom is there even any discussion among legislators about proposing any changes.

In Texas, the legislature enacted nine school acts in 1957 and then the issue never again became a major one. To qualify as the agency for handling funds under the Elementary and Secondary Education Act, the Texas Education Agency obtained court action several months ago declaring all the school segregation laws officially unconstitutional and void.

As one of the first states faced with school desegregation, Virginia initiated many of the legislative approaches adopted in other states. The legislators tried every innovation in their program known as "massive resistance" to school desegregation. The state changed course in 1959 after federal courts invalidated many of the laws and Negroes entered public schools with whites. Today, virtually all of the laws have been thrown out by the courts or repealed by the legislature.

In the border area, none of the states attempted a legislative attack on school desegregation. Missouri and West Virginia, for example, deleted references to race and killed their segregation laws as early as 1955 and 1957, respectively. Kentucky deleted legal references to race in 1965, Oklahoma delayed taking a similar course until this year, and Maryland, although it belatedly ratified the 14th Amendment in 1959, has not removed the invalid laws but does plan their removal. Delaware's constitution provides for separate schools for whites, Negroes, Moors and Indians, but these provisions are ignored. ○

Gov. George C. Wallace addresses the recent special session of the Alabama Legislature.